

IN SENATE OF THE UNITED STATES.

JULY 4, 1836.

Read, and ordered to be printed.

Mr. GOLDSBOROUGH made the following

REPORT:

The Committee on Commerce, to whom was referred the memorial of David Melvill, of Newport, Rhode Island, report:

David Melvill complains that, lately holding the office of weigher and gauger in the custom-house at Newport, he was removed from the same by the collector, William Littlefield, without cause, by which he has suffered wrong and oppression; and he sets forth the degraded and servile situation in which a portion of the citizens of the United States are placed, and the persecutions which they suffer by the exercise of an irresponsible and despotic power on the part of certain officers of Government.

Melvill asks nothing for himself, but prays that a law may be passed to correct such abuses in office, and to secure citizens in the full exercise of their rights.

The memorialist prefaces his statement with the following declaration, taken from the inaugural address of President Jefferson, which he adopts as textuary, viz: "Having banished from our land religious intolerance, under which mankind so long bled and suffered, we have yet gained little, if we countenance a political intolerance as despotic as wicked, and capable of as bitter and bloody persecutions." He then states that sundry faithful and capable officers of Government have been abruptly discharged from the custom-house at Newport, for no other cause than their disagreement in politics from the present administration; or because they were not qualified as voters by the laws of the State of Rhode Island, where they resided, and could not, of course, aid the political views of the existing administration and its friends; whilst others had been appointed in their stead, who, having the requisite qualification of voters, agreed, as their price of office, to support the men and measures of the administration party, although contrary to their own opinions.

These appear to be the distinct allegations made by the memorialist; and the facts he adduces are found in the following detail:

"Your memorialist was appointed weigher and gauger of the customs for the port of Newport, district of Newport, State of Rhode Island, by the late collector, Christopher Ellery, in the year 1824; which office he held for ten years, to the perfect satisfaction of the collector, as well as to that of his successor, and with a sincere consciousness of having uniformly executed the duties of his station with correctness and fidelity,

and of having honestly supported the constitution and laws of the United States. That upon the appointment of the present collector, William Littlefield, the subordinate officers of the customs were assured by him that he had inquired of the late collector, Ellery, into the character and fitness of those employed in the customs, and that he was satisfied that they were all honest, capable, and faithful officers, and none need fear being removed, while they continued to perform their duties as they had done.

"Not long after Mr. Littlefield became collector, he was called on by those who recommended him to office, to know why he had not made the removals from and appointments to office, which he had promised, in case he obtained the appointment of collector. He was accused of keeping in employment those who had uniformly opposed the administration, to the exclusion of its supporters; and he was threatened with their displeasure if he did not speedily comply with his engagements made previous to his appointment. A meeting of partisans was soon after held, styling themselves 'a committee of the administration party,' where a list was made out of the officers of the customs required to be removed, and of those who were selected to be appointed in their places; which was sent to the collector, Littlefield, with a request, that he would immediately make those removals and appointments; which list of *proscribed officers*, and of those who were to take their places, was sent by the collector, as his own list, to the Secretary of the Treasury, for his approval; and it was approved of by the Secretary of the Treasury.

"Of the officers attached to the customs at Newport, who held office when Mr. Littlefield came in as collector, three were retained and five removed; of the three retained, one had not recently opposed the administration, and gave assurances that he would not in future; the other two had uniformly voted with the administration party. Of the five removed, one had sometimes voted with the administration party, but declined voting when members of the General Assembly were to be chosen, who were to elect a Senator to Congress, his father-in-law being the whig candidate; two of them were not freeholders, of course had no vote; and two others, by their votes, had uniformly opposed the administration party.

"Among the removed, were your memorialist, (not a freeholder,) and his colleague, David M. Coggeshall, (a freeholder,) who had always opposed the administration. Your memorialist and Coggeshall were the weighers and gaugers of the port. Peleg Clarke was appointed in the place of your memorialist, and Elisha Atkins in that of Coggeshall.

"As soon as this was told to your memorialist, he called on the collector to know the truth of it. He inquired of the collector for what reasons he had been removed, and whether any complaints had been made against him. The collector said that Peleg Clarke had been appointed in the place of your memorialist, but that Mr. Clarke, when informed of his appointment, declared that he was not a candidate for any office, that he had been appointed without his knowledge and consent, and would not accept the appointment. The collector further informed your memorialist that, as Mr. Clarke had declined the appointment, your memorialist should remain in the same situation, as if no one had been nominated against him; and that he might rest assured that he (the collector)

would use his best endeavors to retain him in office; that it was never his (the collector's) wish to remove your memorialist; that no complaints had been made against him of any kind whatever, but that he had performed the duties of his office to his perfect satisfaction. But against Mr. Coggeshall, the other weigher and gauger, the collector said *there were well-authenticated complaints, which could not be overlooked*; that he was removed from office, and Elisha Atkins appointed in his place, which appointment Atkins had accepted. Your memorialist inquired what complaints had been made against Coggeshall, who had been considered remarkably correct in his official duties. He was informed by the collector that Mr. Coggeswell and his eldest son, who was a voter in right of his father, uniformly opposed and voted against the administration and its supporters, and *on that ground Coggeshall had been removed*. This took place early in the month of March, 1835. That, on the 16th or 17th day of the same month, Elisha Atkins told your memorialist that when he was appointed in the place of Coggeshall, he had been commissioned as weigher and gauger, but that the collector had that day called upon him and requested to see his commission, when he took a pen and dashed out the word *gauger*, and handed it back to him, saying, You are weigher only, and Mr. Coggeshall is gauger only; and Mr. Atkins understood the collector that your memorialist still stood as weigher and gauger. What seemed to corroborate this impression was, that on the 20th of March, your memorialist was directed by the collector to gauge a cargo of molasses, and weigh a quantity of sugar, for the unlading of which a permit had been granted; and which duties your memorialist performed, and made return of the same on the 25th. About the 28th or 29th following, your memorialist was verbally informed, by message from the collector, that Elisha Atkins was appointed sole weigher and David M. Coggeshall sole gauger of this port, and that the services of your memorialist were no longer required.

"Immediately upon the receipt of this message, your memorialist repaired to the custom-house to see the collector, when he stated to him the verbal message he had received, and asked him for what reason he had been superseded in office, and if there had been any complaints against him since Mr. Clarke refused to be appointed in his place, and since the assurances he had received from the collector on that occasion. Again your memorialist was assured by the collector *that no complaints had been made against him*, but that your memorialist had performed his duties most correctly and faithfully, and said it was not *his* wish that your memorialist should be removed; that he should be pleased to see him reinstated, which he thought might be effected by a proper representation to the Secretary of the Treasury.

"Your memorialist addressed a letter to the Secretary at length on the subject, stating all the facts he knew; and a correspondence ensued, which is herewith submitted. (Nos. 1, 2, 3, 4, 5, 6.)

"Your memorialist further states that an honorable member of the House of Representatives in Congress from the State of Rhode Island was then in Portsmouth, who was consulted and advised with by the administration party, particularly in regard to removals and appointments, and who, your memorialist was informed, was at the meeting of the proscribing committee. Your memorialist having, as long as he had a freehold, sup-

ported this member of Congress, applied to him for an explanation of the cause of the removal of your memorialist from office, against whom the collector had stated that there was no complaint, and also into the cause of reinstating D. M. Coggeshall, who had so recently been removed for causes which the collector *deemed insurmountable, and could not be overlooked*. This member of Congress replied that it was stated by one of the committee who made the nominations, 'that five or six years ago, when Governor Fenner was a candidate for Governor, although your memorialist voted for *him*, yet he voted for the whole opposition Senate;' but the strongest reason for the removal of your memorialist was, "*that he was not now possessed of a freehold estate, and could be of no use to the party, even if he was favorable to their measures,*" (as, without a freehold, he had no vote,) and 'it was incumbent on the party to husband all their resources;' but further said, 'if your memorialist would possess himself of a freehold estate, and support the administration, he should be appointed to a better office when the new custom-house act should pass.'

"As to D. M. Coggeshall, this same member of Congress said 'he had no partiality for him, as he has always voted against him, and shamefully abused both himself and the party, but that Mr. Coggeshall had been before the committee, and, with tears and supplications for mercy, had offered to prostrate himself at the feet of the party, and to support their views, if he could be reinstated in office—and *that Coggeshall had been reinstated upon the express condition that he and his son should in future vote on the side of administration.*'"

The letter (No. 1) from the memorialist (Melvill) to the Secretary of the Treasury, entering more fully into the detail of the transaction, and of the circumstances connected with it, is again referred to, and is offered as a part of this report.

There has been laid before the committee, also, a strong body of testimonials in behalf of the credibility and character of the memorialist, which it is thought important should accompany the report, and be considered a part thereof.

With a view of looking into this case with all the care and aid that they could command, as well to understand the true nature and extent of the wrong (if any wrong had been committed) as also to find out what remedy might be applied, the committee communicated with the Secretary of the Treasury, from whom they received an answer; but the report of the collector, (Littlefield,) ordered by the Secretary to be specially made to him in Melvill's case, for the right understanding thereof, and which the committee *particularly requested*, among other papers, did not accompany the Secretary's answer.

That answer begins with a commentary upon the papers he presumes to be asked for, as tending to explain the allegations of Melvill, which results in the declaration of the Secretary, "that the facts in the case show that the collector conducted in conformity to established usage and law," and refers to the act of Congress of March 2, 1799; and, in confirming the nominations of the collector, the Secretary alleges that he "applied a principle which was supposed had generally governed the Department in such cases, viz., that there was a manifest propriety in not requiring a collector to keep in his employ and confidence subordinate

persons in whom he had not full reliance, and whose services he might not deem, *from any cause*, so agreeable and useful to himself or the community as those of others," and appeals to the decision of the circuit court for the Massachusetts district, as giving authority to this course, when it declares "that they (the subaltern officers in the customs) depend for their employment upon the good will of each successive collector." Pursuing what he considers the long practice of the Department in like cases, assimilating it to the action of the Senate upon presidential nominations, the Secretary says he approved the appointments, to which no valid objections were known, as soon as the explanations arrived, on the 14th February, (in answer to the Secretary's letter inquiring into the character of G. W. Ellery and H. O. Tift,) but he still abstains from saying a word about "the report of the collector, Littlefield, ordered by the Secretary to be specially made to him in Melvill's case, and which had been particularly requested, both by Melvill and by this committee. This report from the collector was demanded by the Secretary between the 26th June and the 2d July, 1835, as stated by him in his answer to Melvill's letter of the former date.

Previous to the year 1831, the Secretary remarks, "the practice is understood to have conformed to such a construction of the act, (of 1799,) that the approbation of the Department was intended to be confined to the number and employment of the subordinate officers under the collector, and not to the particular individuals themselves whom he might deem useful to employ—the collector being himself chiefly responsible for them, as he was on the spot, and had better means of judging, in regard to them, in all matters." Such, says the Secretary, is a fair and practical view of the subject—"that the controlling power of the Department, *when rightly exercised*, as to the individuals employed, must rather rest on usage and the general supervising direction of the customs belonging to the Treasury, *than on the words or spirit of the act of Congress under consideration*." But, it is proper to state "that, *at most periods*, it is understood to have been customary to exercise this control, either under the words of the act cited, or under the general authority of the Department, provided the Department *happened*, at the time of the nominations, to be in possession, from any quarter, of information unfavorable to the appointment."

Thus, after setting forth the usages and construction of the law, and the decisions had on it, which make out the powers of the collector, we find that it is all declared to be subject to the control of the Department at last, "whenever *it happened* to be in possession, from any quarter, of information against the appointment."

The Secretary further proceeds to say "that, from whatever source deriving the control, the Department saw nothing improper in the collector, in Melvill's case, sufficient to induce or justify it in withholding a sanction to the particular appointment made in his place in February, 1835."

As the Department possesses no authority by law, and has never, in fact, exercised any, to his knowledge, in removing this class of subordinate officers, (when once appointed by the collector,) except through his recommendation or nomination to that effect—holding the collector answerable if improper persons are continued to be employed or retained

in office, after *sufficient* objections are known to him; "he laid Melvill's complaint before the collector, and *made certain inquiries* to satisfy himself, as the head of the Department, whether the charges made against the collector were of a character which seemed to require censure for what was already past and irreversible by the Department alone, or any communication that his conduct had been so improper as to require it to be reported to the President for his removal from office."

We have no account given by the Secretary as to the result of this communication with the collector, which, no doubt, from its character and its date, produced the report that Melvill alludes to, as ordered by the Secretary to be made, and which the committee have in vain asked for. But the Secretary goes on to cloud this communication in mystery, and to throw over it the impenetrable mantle of secrecy, when he says, "*this*, like most other transactions of a similar character between principal and subordinates, in relation to character, and qualifications, and fitness of candidates for office, being executive in its nature, and not intended for the public eye, is not presumed to be wished for by the committee on an occasion when the Senate is not engaged in Executive business, but in the public and legislative consideration of a petition which merely asks for legislation in a case where, by law, the collector and the Department possess the whole appointing power."

After this homily upon the secrecy that must attach to all Executive proceedings in relation to the fitness of character for appointments; the necessity of such secrecy to guard against heartburnings and hostilities; the practice of the Department in forwarding communications, even on Executive business, when the Senate is thus engaged; the rules prescribed by the Senate in such cases, and the ill consequences that would otherwise arise—the Secretary "disavows any objection to further legislation by Congress that would take away from him '*the little supervising power*' now exercised in filling subordinate appointments, or that should provide for appointments or appeals in any other way, where the power would be deemed more convenient, and, at the same time, constitutional."

The decision of the circuit court of the United States is again brought into view (as the Secretary says) as some refutation of the general charge that "the petitioner has been oppressed by the collector, and unjustly removed from office;" but he further declares that, "however this decision may establish the principle of the necessity of reappointments," (under each succeeding collector,) yet "*that principle has not been recognised by the Department as imperative*;" on the contrary, (says the Secretary,) "from long usage, and the circumstance that the cause was not carried up to the Supreme Court for confirmation or reversal, fortified by an opinion of the Attorney General in 1831, it has been deemed best, generally, to adhere to the course pursued before that decision was made, and to consider all the subordinate officers, so far as respects the Department, after their superior has died or resigned, *not to be in a condition requiring reappointment*, but as still continuing in the public service, until the new collector chooses to appoint others in their places."

In conclusion, the Secretary says, "Since the above decision, this may have been an error in practice here, which requires legislative correction, and which, after the long continuance of the practice since the decision and opinion of the Attorney General, *the Secretary has not felt*

himself bound to change without further legislation ;" and, "although the decision has left the collector in his full right, immediately upon his entry into office, to exercise the power of removal and substitution, since the year 1829, this practice has not been allowed by the Department without first submitting his nominations for the approbation of the Secretary of the Treasury." (See Secretary's letter to committee, annexed.)

To all these statements the committee think it proper to add, that the character of Melvill (the memorialist) for truth and integrity is ably and abundantly sustained by unexceptionable vouchers ; and such is the congruity between the statements and allegations of Melvill and the remarks made to him by the honorable member of Congress, that it leaves no room to doubt their correctness ; and the more particularly, as these statements and allegations are unnoticed, and, therefore, not denied by the Secretary, to whom they were all substantially and fully presented in Mr. Melvill's communication to him of the 28th May, 1835—the Secretary chiefly confining himself to the qualifications of those substituted in the place of the proscribed, and to the powers of the collector and the Department in making removals.

Mr. Melvill has thought proper, also, to furnish the Secretary with a sketch of his political life and opinions since the year 1798, in which he strongly sustains himself as a faithful and efficient member of the democratic party during the presidentiads of Mr. Jefferson and Mr. Madison, and up to the present time, which, he seems to have thought, combined with adequate and unexceptionable official services, would have ensured him a continuance in office, until convinced to the contrary by his recent detrusion.

Whether Mr. Melvill has been oppressed, as he complains, will depend much upon the legal rights of the collector to turn him out at will, and the practical exercise of that right. That the collector has this right, the Secretary designs to show, by adducing the decision of the circuit court of the United States in the district of Massachusetts, which declares "that the subaltern officers in the customs depend for their employment upon the good will of each successive collector, and that, upon the death or resignation of a collector, all such offices are vacated ;" and then the Secretary remarks "that this is some refutation of the general charge that the petitioner has been oppressed by the collector, and unjustly removed from office." Yet, immediately afterwards, the Secretary informs us, in contradiction to this, "that, however this decision may establish the principle of reappointments under each successive collector, *that principle has not been recognised by the Department as imperative,*" but "that it has deemed it best, generally, to adhere to the course pursued before that decision was made, and to consider all subordinate officers, so far as respects the Department, after the death or resignation of their superior, as not in a condition requiring reappointment, but as still continuing in the public service, *until the new collector chooses to appoint others in their places.*"

Thus, the refutation of oppression, which the judgment of the court is said to afford, is laid aside, and the declaration that the usage in the Department (notwithstanding that judgment) of regarding all the subordinates as in office upon the coming in of a collector, clearly makes Mr. Melvill's case "a removal" at the will of the collector, and not a legal vacation of his office upon a contingency.

It does not seem to the committee, from any evidence before them, that the collector (Littlefield) had a wish or design to turn the memorialist out of office, or else his declarations, as laid before them, would stamp him with more than gross hypocrisy; but it rather appears that he has been influenced by others to turn Melvill out, and the act is sustained under color of law.

Mr. Melvill was told by the collector (Littlefield) that he had inquired of the former collector into the character and fitness of those employed in the customs at Newport, and declared that he was satisfied, from the information of the collector, that they were all honest, capable, and faithful officers, and assured them that none need fear being turned out whilst they continued to perform their duty as they had done. This assurance was again and again repeated to Melvill, both before and even after he was turned out by Littlefield. Melvill's removal from office, therefore, not being ("by established usage in the Department") from a vacancy created upon the death or resignation of a collector, and not being from any deficiency in his official duties, must, of course, have arisen from some other cause; this cause is stated by Mr. Melvill, and is corroborated by his reported conversations with an honorable member of Congress.

The power adjudged by the circuit court, and which has been always claimed by collectors, under the advisement and sanction of the Department, of turning out subaltern officers of the customs at will, may be a necessary power; it may be, in its judicious and proper exercise, essential to a due administration of the custom-house concerns. The committee are far from denying the power, but they conceive that it should only be used (as it was intended) to preserve integrity, competency, fidelity, and good conduct in those who are called, as subaltern officers, to the discharge of duties in the custom-house. To exert this power for political party views, or to promote party ends, (as it never was the design of the law which gives the power of appointment,) so it can, in the opinion of the committee, be as little justified as it can be tolerated in an honest supervision of the Department. All contracts or understandings with a public officer which make it a condition of his appointment to office that he should use his official station to multiply political partisans, or to further political party views, are gross and inadmissible abuses. Offices are, by the constitution, intended to be filled exclusively for the best discharge of their duties, so that the country may enjoy the greatest advantage from the ablest fulfilment of official trust. To exact, as the condition of appointment to office, any thing but what is properly official and moral conduct, is illegal and wrong; but to exact political partisan services as the condition of office, is foreign to our laws and our system, and leads to corruption. So, to turn a man out of office merely because his known political opinions prevent him from being a political partisan of those who turn him out, is proscription for opinion's sake, and persecution for a correct assertion of his constitutional rights. All active participation in political party affairs by officers of the Government is unfit and unseemly, but the right of opinion, and the constitutional expression of it, is sacredly secured to every freeman; it is the birthright of every American citizen; the constitution assures it, and the law defends it. Whatever invades this right; whatever robs a man of it; whatever pan-

ders to the appetite to seduce him from the maintenance of this right, must be oppression, or persecution, or corruption.

When the Secretary says that he adheres to a principle of "not requiring a collector to keep in his employ and confidence subordinate persons in whom he had not full reliance, and whose services he might not deem, *from any cause*, so agreeable and useful to himself or the community as those of others," he builds a platform broad enough for every caprice, every injustice, and every proscription to stand on. To say that a collector may turn out any and every subordinate whose services he might not deem, *from any cause*, so agreeable or useful to himself or the community, is an undefined license for practices the most flagitious, provided a collector can be found base enough to justify them under this indefinite principle. "*From any cause*," is a boundless discretion, that may be dictated by any passion, or any object, and defies all accountability. If such is the construction of the Secretary, and such the guidance of the collector, they cannot too soon be corrected by the interposition of restraining authority.

The case presented by the memorialist is one of deep interest, and merits the attention of that power in the Government whose prescribed duty it is "to take care that the laws be faithfully executed." The committee are well aware that the best laws may become destructive of the high interests of the country, and the rights of the citizens, if perverted and abused. Abuses are not always arguments against the existence of laws. They therefore report the facts as furnished to them to the Senate, accompanied by the foregoing remarks, that the Senate, upon due consideration, may take such course as, in their judgment, may seem most proper.

Correspondence between David Melvill and the Secretary of the Treasury, upon the subject of his being turned out of office.

No. 1.

NEWPORT, RHODE ISLAND, May 26, 1835.

SIR: Having been recently superseded in the office of weigher and gauger at this port, in a manner which I cannot think would be approved if correctly understood, I owe it to myself, as a citizen who, while in office, performed his duty with correctness and fidelity, and against whom no charges to the contrary have ever been alleged; I owe it to a numerous family, dependent on me alone for support; and I owe it, above all, to the republican institutions of our beloved country, in support of which I have devoted my whole life with sincerity and zeal, and which it is my strongest wish to see perpetuated, to lay the grievance under which I suffer before that branch of the Government having cognizance of the subject, and, with the respect due to the head of that Department, to solicit his indulgence while I state the facts relating to my peculiar situation with frankness and sincerity, and ask the favor of his patient examination, consideration, and decision.

In laying my case before you, sir, I shall be under the necessity of making statements, relating to myself, which would come with better grace

from another ; but I pledge my honor, as a man of veracity, that I will state nothing which is not strictly true, and susceptible of verification.

If I had been removed from office for just cause, and another appointed in my place by the *collector*, in conformity to the prerogative given him by law ; or, if it had been done by him in accordance with the recommendations of the administration party, if I had acted in opposition to it, (neither of which is the fact,) and the appointment of another in my place had been approved by the Secretary of the Treasury, however deeply I might deplore my fate, I should have submitted to it with becoming resignation. But I find myself dismissed without the least cause of complaint against me, or any intimation of neglect of duty, incorrectness, intemperance, or any charges whatever ; very much against the inclination of the collector, if any reliance can be placed in the repeated and earnest declarations of the collector himself ; and without the approbation, and contrary to the wishes, of the administration party, almost to a man, if any confidence can be placed in unsolicited declarations of very many respectable men of the party. How this has been effected, and the remote causes which have led to it, will make it necessary for me to recite some of the most prominent incidents of my life, besides giving a statement of recent events connected with it ; in doing which, I will endeavor to intrude no more upon your patience than is necessary to my purpose. As I am confident I have been removed from office by an undue influence for my *political* sins of no recent date, (and for a circumstance beyond my control, which I will mention in the sequel,) I will state explicitly, that I commenced my political career as a republican of the Jefferson school, as soon as I arrived to the years of manhood, and became an active partisan in the cause in 1798, then having arrived to the age of twenty-five years, and took a decided part in the great struggle of the time, which resulted in the triumph of republican principles, and in the election of that great advocate of liberty, Thomas Jefferson, to the Presidency of the United States in 1801 ; and I take a pride in the reflection that, from those principles, so ably condensed in his inaugural speech, and so admirably sustained throughout his administration, I have never swerved. I state this without reserve, because your official station, under an administration professedly conducted on the same pure ground of action, is ample evidence of your just sense of those immutable principles, and a sure pledge that, where you have the control, you will not permit any one to suffer persecution for having supported those principles.

In the year 1812, when our country was on the eve of a war with Great Britain, I commanded an independent military company in this town. Through my influence, I prevailed on the company to evince the determination to support the Government, and to volunteer their services to the United States. The enclosed copies of resolutions of the company, making a tender of their services to the President of the United States, and the answer of the Secretary of War, by direction of the President, accepting them, is sufficiently explanatory of this subject. I was ordered into service with my company on the first of September, 1812, to garrison Fort Adams in this harbor, when the fleet of the enemy was at its entrance blockading it, and there were daily apprehensions of an attack. We remained performing garrison duty until midwinter, when, the

enemy having withdrawn from the coast, and there being no danger of an attack at that season, the company was released from duty by an order from the Secretary of War, and the members permitted to return to their homes, subject to be called out again, whenever their services should be required, at any time during the term of two years, for which they had volunteered.

For my early attachment and steady adherence to the republican cause, and for volunteering my services to the United States, with the company under my command, at a time when to declare in favor of the *United States* was considered *treason* against *New England*, I have suffered severely from the persecution and rancorous enmity of the federal party in this place, which has pursued me through life, never failing to vent their wrath whenever an opportunity has offered. It was truly said by the late John Randolph, with regard to that party, that "collectively and individually, they never forget their friends nor forgive their enemies."

Soon after the appointment of the late collector, Christ. Ellery, Esq., to that office, representations were made against David M. Coggeshall, weigher and gauger, that he had, by his opposition to the republican cause during the administrations of Jefferson and Madison, his abuse of them and their supporters, and his violent opposition to the late war, and his bitter imprecations and abuse of those who supported or engaged in it, rendered himself extremely obnoxious to the republican party, and they recommended his removal, and the appointment of a republican in his place. I do not know that I was named to the collector by a single individual for that appointment; I certainly had not solicited it. I had been from early life politically associated and intimately acquainted with Mr. Ellery, and when the office of collector was vacated by the death of his uncle, the venerable William Ellery, Esq., I was recommended by my friends for that office; but on hearing that my old friend, Christopher Ellery, Esq., was a candidate, I withdrew my recommendations, and interested myself and my friends in his favor, and obtained for him the recommendations of the Vice President of the United States, Daniel D. Tompkins, Esq., who had previously offered me his support. It is probably from a knowledge of these facts, and a perfect acquaintance with my character and qualifications, that he *offered* me the office in place of Mr. Coggeshall, which was the first intimation I had of the intended removal. In May, 1820, the collector discharged Mr. Coggeshall and appointed me, without having first obtained the approbation of the Secretary of the Treasury, the honorable William H. Crawford. As soon as it was known that this removal and appointment had been made by the collector, the federal friends of Mr. Coggeshall, and my political enemies, rallied in his favor; and the same mail that carried my appointment to Washington, for the approbation of the Secretary of the Treasury, carried a letter from the honorable William Hunter, who was a particular friend of the Secretary, remonstrating against the removal of Mr. Coggeshall, and praying that he might be reinstated. The effort in favor of Mr. Coggeshall, and against me, was avowedly on political grounds, as on those grounds he had been removed. No reasons having been assigned for the removal, the collector was *ordered* by the Secretary to reinstate Mr. Coggeshall to the place he held in the customs under his predecessor in office. On this occasion, the Secretary informed Mr. Ellery that no officer, appointed by the collector and approved by

the Secretary of the Treasury, could be removed from office by the collector or his successor in office, without first stating his reasons for the removal to the Secretary, and obtaining his consent. On this ground Mr. Coggeshall was reinstated in June, 1820.

I spent the winter and spring of 1822 at Washington, my business being with Mr. Crawford, relating to the introduction of an improvement in lamps of my invention into the light-houses, which he had recommended, and for which he had asked for an appropriation. I had frequent interviews with him on the subject of the lamp, and of the light-house establishment generally, and he became well acquainted with my character from his own observation, as well as from the good opinion expressed by Mr. Eddy and Mr. Durfee, then representatives from this State, by whom I was introduced to his notice. In the spring of 1823, by request of Mr. Crawford, I visited all the light-houses, from Sandy Hook, through Long Island sound, to Montauk Point, in the revenue cutter *Alert*, Captain H. Cahoone, to aid Captain Cahoone in reporting the situation of the light-houses, number of lamps in use in each, quality of the oil, &c.

In 1824, there being, in the opinion of the collector, necessity for another weigher and gauger at this port, Mr. Coggeshall being obliged frequently to employ two or three irresponsible assistants to weigh and gauge, it was represented to the Secretary of the Treasury by the honorable Job Durfee, at the request of the collector; and, if the Secretary agreed to the appointment of another, the collector would appoint *me*, if it was agreeable to him. Mr. Crawford immediately wrote to the collector that he had been informed of the necessity of another weigher and gauger at this port, requesting him to appoint one, and whoever he should appoint would be approved. I received my appointment, approved by the Secretary, in September, 1824. From that time, Mr. Coggeshall and myself have shared the duties and emoluments of the office with uninterrupted harmony, and mutual condescension and good-will, until I was removed.

I had been an admirer of General Jackson from the time I first came to a knowledge of him, from his gallant exploits and well-merited fame. When he was up for the Presidency, I had no knowledge of his merits as a statesman, and I gave the preference to John Quincy Adams, for no other reason than because he was a *New England man*, and voted for the Adams ticket for electors on that ground alone, not because I was an officer under his administration. General Jackson was elected President; and, admiring the principles he avowed in his inaugural address, I, subsequently to that period, while I had a vote, cast it for him who, if elected, would support President Jackson in his administration of the Government. Previous to the election of the President to his second term, I was under the necessity of disposing of my freehold, and have not had a vote since; but I have uniformly exerted my influence in favor of the candidate favorable to the administration. Having approved of every prominent measure of President Jackson's administration, I am sure no man ever heard me utter a word disrespectful of him, or questioning the purity of his motives; there could, therefore, be no complaint against me on *modern political ground*.

It was reported, about the first of March, that movements were making

at Washington to effect the removal of some of the subordinate officers of the customs. It was said that a list of those to be removed, and a list of those nominated by the Jackson party to be appointed, had been forwarded to Washington by the collector, for the approval of the Secretary of the Treasury. I soon after learned from Washington that I was among the proscribed.

I inquired of several of the party if such a thing was on foot, and if so, what were the grounds of my removal. I was assured by every one that nothing of the kind had taken place; that there would be some nominations made before long, to take the places of some of the present incumbents; but it would be confined to those who had opposed the administration of President Jackson, and abused him and his friends, which would not affect me. I heard nothing further, until about the middle of March, when it was reported that removals and new appointments had taken place among the officers of the customs, and that Elisha Atkins had been appointed weigher and gauger in the place of David M. Coggeshall, and Peleg Clarke in my place. On my way to the custom-house, to inquire into the truth of the report, I met Mr. Clarke, and asked him if it was true that he had been appointed weigher and gauger in my place. He said it was true he had been *appointed*, but it had been done without his knowledge or consent; that, if he had been consulted, he would have prevented the nomination; and that, on being sent for by the collector, and informed of his appointment, he was never more surprised at anything in his life, and he had utterly declined accepting it; that he wanted no office, and if he did, he would not accept one which would deprive a man of my age, against whom he had never heard any objection, of the means of support of a large family; that the collector seemed rather pleased than otherwise at his declining the office, and said I was still weigher and gauger. I immediately called on the collector, and told him I had heard a report that I was removed from office, and another person appointed in my place; and asked him if there had been any complaints of any kind against me; and, if I had not performed the duties of the office to his satisfaction; and whether he considered me *in* or *out* of the office. He said Mr. Peleg Clarke *had* been nominated and appointed to take my place as weigher and gauger, but Mr. Clarke had declined; it had been done without his knowledge or consent, and declined accepting the office; that, of course, I stood as I did before the appointment of Mr. Clarke was made. He assured me it was not his wish to remove me, but I had some powerful enemies; that there had been no complaints of any kind against me; that he was perfectly satisfied with me; that I had performed my duty with fidelity and accuracy, and might depend on his word, he would do every thing in his power to retain me if I wished it. I told him I certainly *did*, and should feel under obligations to him for it; that I had a large family to support, and, from having married late in life, four of my children were still at the primary schools; and that the emoluments of this office, though small, were my chief dependance for their support; that, if deprived of it at my time of life, (sixty-two,) without resources, I knew not what I could turn my hand to to support my family. He assured me, *again and again*, that he was perfectly satisfied with me, and he would do every thing *in* his power to retain me in office. He informed me, at the same time, that Elisha Atkins was appointed in the

place of David M. Coggeshall, and had accepted the appointment ; that there were some serious complaints against Mr. Coggeshall, which were so well authenticated that they could not be gotten over, and he was out of office ; and added, I have done all that was required of me, I will stop here and do no more ; depend upon it, you shall not be removed if I can save you.

As soon as it was known that Mr. Atkins had accepted the appointment of weigher and gauger, and Mr. Coggeshall was removed, and that, by the refusal of Mr. Clarke to accept the appointment, I still remained in office, I was informed, by a firm friend of the administration, that a violent effort was making by Mr. Coggeshall's old federal friends (not of the Jackson party) to get him reinstated ; and, as Mr. Atkins had accepted, and Mr. Clarke had declined, and they had undertaken it on old party grounds ; and, as he had heard one of them state that Mr. Coggeshall had been removed once to give place to me, and after he had been reinstated by order of Mr. Crawford, I was again appointed to share the office with him, he was fearful they would endeavor to get him reinstated and leave me out altogether, which would be an outrageous thing, and directly contrary to the wishes of the party.

I told him that, after the assurances I had received from the collector, it could not be possible that he would agree to any arrangement which would exclude me ; and, I presumed, the effort would be to prevail on Mr. Atkins, who is independent in point of property, and had no family, to follow the example of Mr. Clarke ; particularly as he was appointed without his knowledge or consent, had never sought the office, and had accepted of it only to gratify his friends, as he had himself told me. I fell in with Mr. Atkins a few minutes after, told him what I had heard, and asked him if he knew any thing about it. He said there had been a movement on the part of Mr. Coggeshall's friends to get him reinstated, which had resulted in taking from *him* the office of *gauger*, which the collector struck from his commission, on which he had previously taken his engagement as *weigher and gauger*, and he now stood weigher only, which he was undecided whether he would retain or resign ; and that Mr. Coggeshall was appointed gauger ; and that the collector informed him I remained as before, *weigher and gauger*.

On the 20th of March a vessel arrived with a cargo of molasses and some sugar. Mr. Coggeshall had received no official notice that his appointment as gauger had been confirmed ; he called on the collector to inquire who was to attend to the gauging, and the collector told him that he must attend to it, as usual. Mr. Coggeshall told him that he and myself always gauged together, as one man could not gauge as fast as it was discharged, and we made the return alternately, and it was my turn to make the return of this cargo. The collector said, Very well, Mr. Melvill and you will attend to the duty, and Mr. Melvill will make the returns. Mr. Coggeshall and myself attended to it as usual, and I made the returns of the cargo on the 26th of March. On the 29th, I received a verbal message from the collector, informing me very unexpectedly that Mr. Atkins was appointed *sole weigher*, and Mr. Coggeshall *sole gauger*.

I called on the collector, and informed him that I had received a verbal message as from him, by which I was sorry to understand that I was

removed from office altogether ; the collector said, Not exactly so ; that it had been decided by Judge Story that every officer appointed by a collector while in office, became defunct on the death or resignation of the collector who appointed him. I remarked that Mr. Crawford, when Secretary of the Treasury, informed Mr. Ellery, when collector, that no officer appointed by a collector and approved by the Secretary of the Treasury could be removed by the collector, or his successor in office, without first exhibiting reasons to the Secretary for making the removal, and obtaining his approbation ; and one officer, who had been removed by Mr. Ellery under those circumstances, was, by Mr. Crawford, *ordered* to be reinstated to the place he held in the customs under an appointment by his predecessor in office. I asked the collector for what cause I had been displaced ; whether there had been anything alleged against me since he informed me that I remained as I did before Mr. Clarke was appointed, and that he would do every thing in his power to retain me in office. He replied, " There have been no charges or complaints of any kind against you ; you have done the duties of your office to my perfect satisfaction ; *I am sorry you are displaced or removed* ; you know how I am situated ; I could not save you ; you have some violent enemies here." I replied, "*Old political enemies only.*" He continued, " If you have any friends at Washington to whom you could write to intercede for you with the Secretary of the Treasury, perhaps you might yet be reinstated as weigher and gauger, and I should be glad if you could succeed, for I did not wish to remove you." I handed him a note, which is enclosed, and asked him to give me an answer to it in writing ; he read it, and handed it back to me, saying, he could not commit himself by putting his name to anything of the kind, (see letter, 29th March, 1835,) but he would state to anybody I might refer to him that there were no complaints of any kind against me, and that I had performed my duty to his satisfaction, as an honest, correct, and faithful officer.

I asked him why one weigher and one gauger was appointed, when they might as well both be weighers and gaugers, when the bill reported by the Secretary of the Treasury, as well as the bill acted upon in the House of Representatives, which was still alive, and would come in order before the next Congress, both provided for weighers and gaugers united in the same person. He said his friends advised him to divide the office in that way ; that he did not recollect the provisions of the bill I referred to, and he thought the business could be managed in that way. I told him that nothing was gained by that arrangement, except supplanting me ; that the weigher in one person and the gauger in another would receive the same as two weighers and gaugers would receive ; and that experience would prove to him that two weighers and gaugers were *necessary* here ; that although one weigher would be sufficient, unless two vessels were discharging at the same time, that one gauger could *not* gauge, according to the laws of this State, (to which they were bound to conform,) more than one-half as fast as casks could be discharged from a vessel. Mr. Coggeshall and myself always gauged together, and could barely gauge as fast as a good gang of hands could discharge ; and there was a necessity of gauging molasses as soon as it was out of the vessel, before fermentation takes place, in order to make a correct allowance for wantage, a thing material to the importer.

Supposing the honorable Mr. Pearce to be acquainted with every movement of the party, I asked him if he could tell me on what grounds I had been removed from office, who had never opposed the administration, and had always voted for him while I had a vote, and Mr. Coggeshall reinstated as *sole* gauger, which would nearly double his emoluments, though he had always opposed the administration, and voted against *him*, and all its friends and supporters. He said Mr. Atkins had been named in the place of Captain Coggeshall, with an expectation that he would accept of the office, though it was not the one he wanted, and he had no claims to any; but Mr. Clarke was named to take my place, merely out of compliment to *him* and his *father*, who was one of Mr. Littlefield's bondsmen; that it was not expected that a young man of Mr. Clarke's property and prospects, and part owner of four or five whale-ships, would give up his interest in navigation to accept of any office; and it was expected that he would decline accepting it, and leave me in. But Mr. Coggeshall being removed, and myself left in, had stirred up the dormant feelings of Coggeshall's friends to try to get him reinstated; that it was well known I had no vote now, but it was alleged by some one that I voted four years ago for Governor Fenner, when he was up against Arnold, but not for the *Fenner* (which was the administration) prox; and that, although Mr. Coggeshall had always been against them, (and he had himself no partiality for him,) he had offered to prostrate himself; and his friends had pledged themselves, if he was reinstated, that *he* and his *son* would support the administration prox, which they did at the late election. The first effort was made to prevail on Mr. Atkins to give way, and wait awhile for a better office; but having been appointed to this, and approved, he refused to give way, but was determined to hold on till the custom-house bill passes.

Since I have been discharged from the office, sir, I have been called upon and assured by very many respectable friends of the administration, that they were astonished when they heard of the removals and appointments that had taken place; that it was never the wish of the party to have any removed, except those who had opposed the administration, and abused it and its supporters; that the party had never been consulted in relation to those removals and appointments; that Mr. Littlefield was recommended to the office under a pledge that he would make such removals of those who were obnoxious to the party, and such appointments as the party should direct; that he had not redeemed his pledge; that the removals and appointments made were not by the recommendation of the party; that they had heard with surprise that they had been effected by the recommendation of three or four individuals, without the knowledge or approbation, and contrary to the wishes, of a very great majority of the party; that the administration party here is composed, principally, of *republicans*, with a few of the survivors of the old *federal* party associated with them; that a majority of those who, by their management, had effected the removals and appointments, were of the old federal party; that their partialities are evinced by their having contrived to have *retained* in office all their old party friends who *were in office*, although they have uniformly opposed the administration, and had rendered themselves obnoxious to the whole party by their vulgar abuse of the President, and all who support him and his measures, and whom, more than

any others, it was the wish of the party generally should be removed; and had effected the removal of *five* of the old republican party, three of whom have never opposed the administration in act, word, or deed; and have supplied their places by those who have *supported* the party, but three out of the five are of the old federal party. For verification of these facts I beg to refer to John Sterne, Esq., general treasurer of this State; to Robert R. Carr, Esq., postmaster; to Charles M. Thurston, president of the Exchange Bank, and to Abraham Thurston, Esq., late deputy collector, all of this place.

For my uniform and undeviating adherence to republican principles, and active support of the Government in times that tried men's souls, if those things retain their native merit, I refer to the above-named gentlemen, to my old and respected friend, Christopher Ellery, Esq., to his Excellency James Fenner, and to every old republican and federalist living here—for my sentiments and acts were never disguised or doubtful. For the support I have given to those who supported the administration, as far as herein stated, I refer to the honorable Dutée J. Pearce, who knows I *opposed* him *before*, and *supported* him *after*, he attached himself to the administration party; this he knows and will not deny. It is due to candor to state, that it was not because he opposed the administration that I opposed him, or because he supported the administration that I supported him, but from local considerations, unconnected with party politics. It has been my good fortune to approve of all the leading measures of the present administration, and to have supported those generally who supported them, because I thought the measures just and proper, not because I was an officer of the Government, and felt myself constrained to support every measure of the administration, whether I thought it *right* or *wrong*.

For the satisfaction I have given in the performance of my duty as an officer of the customs faithfully and correctly, and that no charges to the contrary were ever alleged, and (which is no small item in the merits of an officer of the Government) my *uniform temperate habits*, I refer to Christopher Ellery, Esq., the late collector, to the present collector and other officers of the customs, and to every citizen of Newport, for my habits of temperance through life.

If, sir, you will take the trouble to give this subject, of all importance to me, a candid investigation, you will be convinced that, after having devoted my whole life in support of the republican institutions of our country, and in support of the measures of the General Government, from principle, I have, at the age of sixty-two years, (a period of life too far advanced for a man to seek for new employments, in competition with the young and active, to acquire a livelihood, and give support to a numerous family,) been removed without just cause from an office, the emoluments of which, though small, was my chief dependance; not because I had opposed the administration, abused the President, censured his measures, or reviled his friends and supporters—and they wish it; not because there have been any complaints whatever exhibited or alleged against me; but because, after having been a voter for forty years, and exercised my elective franchise in support of our republican institutions, and in consequence of being under the necessity to dispose of my freehold, *I have no vote*; and by setting me aside, appointing one sole weigh-

er, and reinstating another, sole gauger, who has opposed every administration of the Government, from that of Thomas Jefferson to that of Andrew Jackson, and lavished his abuse on them and their supporters; *because his* vote and that of *his son* were pledged to support, contrary to their known opinions, the administration prox, at the late election, as the price of office; and because, as one of the self-created proscribing committee told me, to use his own language, "*because I supported that damned red-breeches old rascal, Tom Jefferson, in all his ruinous measures, and volunteered to support little Jim Madison in his unjust and unnecessary war.*" For these crimes, to which I plead guilty, I am sacrificed to party purposes, and to gratify the insatiable revenge of such men as can make such declarations.

Will the honorable the Secretary of the Treasury, with a knowledge of the high and honorable ground assumed by the President, with regard to the purity of elections, and the countenance and support he has uniformly rendered to those who have stepped forward in support of their country in the time of danger and alarm, sanction such proceedings with his approbation? I am *sure* he will not; and therefore most respectfully pray that he would take the circumstances of my case into his wise consideration, and render me that justice which his sense of the wrong done me, and my merits, may dictate to his unprejudiced mind.

I have the honor to be, sir,

With unfeigned respect,

Your obedient servant,

D. MELVILL.

P. S. I have not asked for any letters in my favor, because I know that those gentlemen of the administration party who are favorable to me are fearful, by their interference for me at this time, to create a division in the party injurious to their cause at the August election, when representatives to Congress are to be chosen; and they are aware that the injudicious removals and appointments in the custom-house department here was the cause of more voters leaving the administration party, and voting for the whig ticket, in this town and Middletown alone, than the majority for the whig Senate in this State; and was the cause of the election of an opposition Senator to Congress. And a few questions, propounded to those I have referred to, will prove the correctness of all I have stated.

NEWPORT, R. I., June 26, 1835.

SIR: Since writing the foregoing letter, dated May 28, which has been unavoidably delayed, I have been informed that the collector, considering all the offices filled by appointments made by his predecessor in office to be vacated by his resignation, unless he thought proper to continue them, has thought it inexpedient to inform the Secretary of the Treasury that (after the appointment of Peleg Clarke in my place, and, in consequence of his declining the appointment, I was continued in office) I was superseded by the appointment of Elisha Atkins *sole* weigher, and David M. Coggeshall *sole* gauger, at this port. A letter I received a few days since, from the Comptroller's office, dated June 6th, addressed to me as

weigher at this port, seems to be a confirmation of this fact, and urges the necessity of making this communication without further delay, that proper steps may be taken to correct the evil complained of by,

Sir, respectfully,

Your obedient servant,

D. MELVILL.

HON. LEVI WOODBURY, *Sec'y of the Treasury.*

PROVIDENCE, *June 19, 1835.*

SIR: I have read the accompanying letter of David Melvill, Esq., relating to his removal from the office of weigher and gauger at the port of Newport, of which, it appears from a letter very recently addressed to him from the Comptroller's office, the Treasury Department has not been apprized. Having lived in Newport, and edited the Rhode Island Republican there, I have been intimately acquainted with Mr. Melvill for twenty-seven years, and do with pleasure certify to the truth of most of the statements made by him, from my own personal knowledge of the facts, and I have not the least doubt of the perfect correctness of the whole narrative. I have never heard him spoken of otherwise than as an honest, correct, and faithful officer, which is verified by inquiries I have recently made at Newport with regard to his removal. I am satisfied he has been displaced without cause, through an undue influence arising from private pique, and to gratify personal political revenge, without regard to the public service, and it would, in my opinion, be doing him no more than justice to reinstate him in the office, the duties of which he has, while in the employment of the Government, faithfully and satisfactorily performed. Such an event, which would restore a meritorious officer, advanced in age, to the means of support of a numerous family, and heal his wounded feelings, would give great pleasure to a very great majority of the administration party, as well here as in Newport, and to none more than to,

Sir, your obedient servant,

WILLIAM SIMONS,

Editor of the Republican Herald.

HON. LEVI WOODBURY,
Secretary of the Treasury.

NEWPORT, *March 29, 1835.*

SIR: I have just been informed that I am removed from the office of weigher and gauger in the customs, an office I have held for ten years past by the appointment of your predecessor, the duties of which I have the consciousness of having performed with correctness and fidelity; the emoluments of which, though small, have been the chief means of support of a numerous family.

Will you, sir, have the goodness to inform me for what cause I am removed? Amidst the wants and privations to which myself and family

must be subjected, it will be a source of consolation to *me* and *them* to learn that there are no charges against me of incompetency, incorrectness, or neglect of duty; and that, as far as your knowledge extends, I have performed the duties assigned me as an honest, capable, and faithful officer.

I am, with consideration, sir,

Very respectfully, your obedient servant,

D. MELVILL.

WILLIAM LITTLEFIELD, Esq.,
Collector of the Customs.

No. 2.

TREASURY DEPARTMENT, *July 2, 1835.*

SIR: I am in the receipt of your communications of the 28th of May and 26th ultimo, in reference to your recent removal from the situation of weigher and gauger at Newport, and have to inform you, in reply, that they have been referred to the collector of that district, with instructions to make report to the Department upon your case, upon the receipt of which due consideration will be given the subject.

In regard to the vacancy referred to in your last letter, occasioned by Mr. Peleg Clarke's declining the appointment of gauger, it is to be observed that David M. Coggeshall was nominated by the collector on the 17th of March, to supply said vacancy, and approved by the Department on the 23d of the same month.

I am, very respectfully, your obedient servant,

LEVI WOODBURY,

Secretary of the Treasury.

Mr. D. MELVILL, *Newport, R. I.*

No. 3.

NEWPORT, R. I., *July 16, 1835.*

SIR: I have received your favor of the 2d July, acknowledging the receipt of my communications of the 28th of May and 26th of June, in reference to my removal from the office of weigher and gauger at this port, and informing me they had been referred to the collector of this district, with instructions to make report to the Department upon my case. I have this day called on the collector, and said I would thank him for a copy of his report on my case, which he refused to furnish me. If it is not incompatible with the rules of the Department, I would esteem it a favor if you would order me to be furnished with a copy.

In regard to the appointment referred to in my letter of the 26th ultimo, it appears my name was not referred to, but "David M. Coggeshall was nominated by the collector on the 17th of March to supply the *vacancy* occasioned by Mr. Peleg Clarke's declining the appointment of gauger, which nomination was approved by the Department on the 23d of the

same month." I would respectfully beg leave to observe that, when Mr. Clarke declined accepting the appointment in my place, I was informed by the collector that I still remained weigher and gauger, the same as if Mr. Clarke had never been named, and I should not be removed if he could prevent it; and, by direction of the collector, on the 20th of March I did, in capacity of weigher and gauger, weigh a quantity of sugar and gauge a cargo of molasses, and made returns of them to the custom-house on the 25th of March, and received payment for them on the 31st, as by my accounts will appear, sworn to by me, and certified by the surveyor on that day. It follows, therefore, that there was *no* vacancy on the 17th of March, occasioned by Mr. Clarke's declining to accept, because I was subsequently directed by the collector to perform the duties of that office, and did perform them, as above stated.

The nomination of David M. Coggeshall, in the manner in which it was done, was evidently a mere subterfuge to *supplant* me, without *naming* me. If there was sufficient cause for the removal of Mr. Coggeshall from the office of weigher and gauger a few days previous to the 17th March, I would beg leave to submit it to the collector why they were not sufficient to bar his nomination on that day to the office of (*sole*) gauger, to my exclusion.

I have nothing against the appointment of David M. Coggeshall, if I had not been supplanted by it; and I should have been better pleased if both of us had been retained, than I should have been to have been retained myself and seen him supplanted by another. I have too sensibly felt my own situation to wish him placed in the same predicament; and I could not consent to prostrate myself before an irresponsible, self-created committee, and, with tears in my eyes, supplicate for mercy and restoration to office, while there was left open to me a more manly and independent course to attain the same end, by an appeal to the proper authority.

I have the honor to be, sir,

Very respectfully, your obedient servant,

D. MELVILL.

The Hon. LEVI WOODBURY,

Secretary of the Treasury.

No. 4.

TREASURY DEPARTMENT, *July 14, 1835.*

SIR: It appears from the explanation of the collector at Newport, that, in the recent appointment of weigher and gauger, he has exercised only his legal rights in appointing another person, against whose fitness no complaint has been made. The Department does not see any occasion for its further interference, but leaves the responsibility on the collector, to whom it belongs.

I am, respectfully,

Your obedient servant,

LEVI WOODBURY,

Secretary of the Treasury.

Mr. D. MELVILL, *Newport, R. I.*

No. 5.

NEWPORT, *July 19, 1835.*

SIR: I wrote you on the 16th instant, in reply to your favor of the 2d, and asked of you as a favor a copy of the collector's report upon my case, which he had refused me. Yours of the 14th instant is this day received, by which I have your decision upon my case, founded on the explanations of the collector, "that, in the recent appointment of weigher and gauger, he has exercised only his legal rights in appointing another person, against whose fitness no complaint has been made;" which makes me more anxious to have a copy, and I hope you will have the goodness to comply with my request. My letter of the 16th instant contains statements explanatory of the subject, not before noticed, applicable as a reply to the explanations of the collector, as far as you have noticed them, to which I must beg leave to direct your particular attention.

I regret that I had not been informed at an earlier period, that the collector had reported on my case, that my letter might have come to your hands simultaneously with the report, and before you had come to a decision on the subject; but I delayed acknowledging the receipt of yours of the 2d, with the expectation that he would have furnished me with a copy of his report when made. I have heard no complaint against the fitness of the person appointed, and I have only complained of the informality—I might say the illegality of my removal, without assigning reasons for it to the Department, or even mentioning my name, but nominating a person who had, a few days before, been removed from the office of weigher and gauger, "for reasons that could not be gotten over," to fill a *vacancy* which it will be seen by reference to facts stated in my last, did not exist; in doing which he has made it appear "*that he has exercised only his legal rights in appointing a person against whose fitness no complaints have been made.*"

I have the honor to be, sir,

Your obedient servant,

D. MELVILL.

Hon. LEVI WOODBURY,
Secretary of the Treasury.

No. 6.

TREASURY DEPARTMENT,

July 22, 1835.

SIR: I have received your letter of the 19th instant, and, in reply, regret to inform you that the representations of collectors to this Department, in regard to appointments, are generally of a confidential nature, or else it would afford me pleasure to comply with your request.

I am, sir, very respectfully,

Your obedient servant,

LEVI WOODBURY,

Secretary of the Treasury.

Mr. D. MELVILL, *Newport, R. I.*

A.

To the Senate and House of Representatives of the United States in Congress assembled :

The subscribers have for a great length of time known David Melvill, Esq., late weigher and gauger of the customs for the port of Newport, who has memorialized Congress, complaining of the informality and injustice of his removal from said office, &c., and do certify that we have always considered him a good and faithful officer, and a man of strict integrity and veracity, and have no doubt of the exact correctness of every fact stated in his memorial, which came within his own knowledge from conversations with the collector, or otherwise, and that nothing is therein stated, derived from other persons, of which he has not an entire conviction of the truth.

| | | |
|---------------------|-------------------|-----------------|
| Thomas G. Pitman, | Michael Freeborn, | Wm. S. Nichols, |
| Adam S. Coe, | Joseph Lyon, | John Stevens, |
| J. S. Munro, | Henry Potter, | Robert P. Lee, |
| Simon Newton, | John Horswell, | Geo. Bowen, |
| John G. Whitehorne, | James Horswell, | R. B. Cranston. |

NEWPORT, *April 28, 1836.*

B.

I, David Melvill, of Newport, in the State of Rhode Island, having forwarded a memorial to the Senate and House of Representatives of the United States, setting forth certain facts in relation to my removal from the office of weigher and gauger of the customs, and complaining of the informality and injustice of the transaction; which memorial was presented to the Senate of the United States on the 15th of April instant, and having now before me a copy of the facts set forth in said memorial, I do on oath solemnly [certify] to the truth of every fact therein stated which came to my knowledge by conversations with the collector or otherwise; and that all the facts stated therein which came not within my personal knowledge, were derived from persons in whose veracity I place perfect reliance; and no fact is stated of which I have not an entire conviction of its truth.

DAVID MELVILL.

Signed and sworn to this twenty-ninth day of April, A. D. 1836, before me,

DANIEL C. DENHAM, *Justice Peace.*

C.

I, Caleb C. Mumford, of Newport, in the State of Rhode Island, do certify on oath that I am acquainted with many of the facts stated by David Melvill, Esq., in his memorial to Congress, (a copy of which I have seen,) complaining of his removal from the office of weigher and gauger for this port, and from my knowledge of the facts and of the character of Mr. Melville for veracity, I have no doubt of the truth of every fact stated in said memorial, as from his own personal knowledge and of

his perfect conviction of the truth of every fact communicated to him by others, on whose information he could confide. And I do further certify on oath that I was removed at the same time from the office of inspector of the customs, to which I was appointed by Christopher Ellery, Esq., the late collector. Previous to my removal a report was in circulation that I *was* or *was to be* removed from office on the ground of voting against the administration party, to which report I gave no heed. A few days after, when it was my turn to go on duty, another officer was sent in my place, and I was not called upon. I then called on the collector and stated to him that it had been reported that I was to be removed from office, but having no official notice of it, I gave no heed to the report, but it was now my turn to be put on duty, and another officer had been ordered to take charge of the vessel which came to me in turn according to the arrangement hitherto pursued, and asked him whether he considered me *in* or *out* of office? I should like to know on what ground I stood? He said I was yet in office, and there must be a mistake on the part of the surveyor in ordering another officer to duty out of his turn. He said whether I was removed or not depended on my own acts. I replied that I had always endeavored to do my duty faithfully, and I would appeal to every officer of the district, from the late collector to the boatmen, from the time I received my appointment to this time, if I had not attended faithfully to my duty. He said he knew I had; that there had been no complaint against me of unfaithfulness or neglect of duty; that I had performed the duties of my office to his perfect satisfaction; that he should be sorry to be obliged to remove me; that if I should be removed it would be the result of my own acts; it would depend on my own conduct, not merely in regard to the duties of my office, but how I acted. I told him, from the reports I had heard, with regard to contemplated removals on political grounds, he alluded to my acts as a freeman, and asked him if that was the fact. He would not answer the question. I informed him I had never in a single instance voted against any representative to Congress who was in favor of the present administration; but in our own State and town affairs I had voted for men who were opposed to the administration of General Jackson. I stated it as my fixed opinion that a man holding an office under the Government of the United States was not justified in voting against any officer of the United States Government who was favorable to those who administered the Government, and at such elections I had never voted, but I had, and should vote according to my own sentiments in the election of State and municipal officers that had no connexion with the Government of the United States. It was a few days after announced in one of the newspapers printed in this town, that certain officers of the customs had been removed by the collector, and my name was among the number. I soon after had notice sent me by the collector that I was removed from office, and no further services were required of me. I never knew what reasons the collector gave the Secretary for removing me; he gave me none; and the only reasons I have ever heard assigned by the friends and supporters of the collector and the administration is, because I voted contrary to their opinions at the elections in this State.

CALEB C. MUMFORD.

Signed and sworn to this twenty-eighth day of April, A. D. 1836, before me,

DANIEL C. DENHAM, *Justice Peace.*

D.

I, Alexander Barker, of Newport, in the State of Rhode Island, do hereby certify on oath that I have seen a copy of the memorial presented to Congress by David Melvill, Esq., late weigher and gauger for this port, and am knowing to many of the facts therein stated, relating to his removal from that office. I have known Mr. Melvill for many years, and knowing his character for integrity and truth, I have no doubt of the correctness of every fact stated from his own knowledge, and his perfect conviction of the truth of those derived from others, in whose veracity he could confide, and that all the facts stated in said memorial can, in my opinion, be substantiated. I do further certify that I was a *boatman* attached to the custom-house by the appointment of the late venerable William Ellery, Esq., when collector, who appointed me in consequence of my having fractured one of my legs, which disabled me from performing hard labor; and while I was in the service of the customs, and in the performance of my duty, I was thrown out of the boat by accident, by which one of my arms was dislocated and in a great measure disabled. Notwithstanding these circumstances, and having a large family, I was removed from the said office and a young and healthy man with a small family appointed in my place, about the same time Mr. Melvill was removed. I was repeatedly told by some of the Jackson party who were friendly to me, for months before I was removed, that I should be removed from office if I continued to vote against the administration, which I had always done in the choice of State and town officers, but not in the choice of representatives to Congress. The last vote I gave for member of Congress was for the honorable Dutée J. Pearce, when he was elected in 1834. On the 14th of March, 1835, James Smith informed me that the collector had appointed him boatman in my place, and he was to take it on the 1st of April. I called on the collector immediately, and inquired if the information I had received from James Smith was correct. He said it was. I asked him for what cause it was done. He said he could not inform me for what cause; it was done and it could not be helped. I asked him if it was in consequence of any difficulty between him and me. He said no. I asked him if it was in consequence of my not knowing my duty or neglecting it. He said no, you know your duty, and have always done it to my satisfaction. I asked him, Did you ever hear of my defrauding the Government, or committing any unlawful act during the time I have been in the service of the customs? He said no, there was nothing of the kind ever occurred to his knowledge. I then asked him if it was for my *political* sentiments I was removed. He declined answering the question, but observed, It is done; I am sorry, but it could not be helped. I told him I knew how it was done: it was by the influence of my political enemies, on political grounds; I knew the men by whom it was dictated, and could name them. I then informed the collector that, as Smith was appointed in my place, to take it on the first of April, he might as well have it immediately; that I would not take the keys of the custom-house again; they might be given to Smith, and he might consider me no longer in office. He said he was sorry I was removed, and wished me well. I do not know what reasons were stated to the Secretary of the Treasury for my removal, or whether any were given. I have

been told by the Jackson friends of the collector, that I was removed for voting at elections in this State for men opposed to the present administration, which I acknowledge to be true ; and it is the only reason I have ever heard assigned.

ALEXANDER BARKER.

Signed and sworn to, this 29th day of April, A. D. 1836, before me,
DANIEL C. DENHAM, *J. P.*

WASHINGTON, *April 19, 1836.*

SIR : The petition of David Melvill, late a weigher and gauger, as he represents, in the custom-house at Newport, Rhode Island, was a few days ago presented to the Senate, in which he sets forth many matters to prove that he has been oppressed by the collector of that port, and unjustly removed from his office. Among other things, he alleges that he was dismissed because he was not a freeholder, and therefore had no right to vote, and that another individual was restored after being removed, on an express condition that he and his father should, in future, vote contrary to their opinions, as before expressed. He asks nothing for himself, but prays that such legislation may be had as to restrain in future the exercise of power in such a manner. He further states that the Treasury Department is in possession of various letters and documents which relate to this matter, and will tend to establish the truth of his allegations. This petition, with the papers, was referred to the Committee on Commerce for examination, and I am directed by that committee to request you to furnish them with such papers, including the report of the collector, if there be one, believing them necessary to a full investigation.

I have the honor to be,

Your obedient servant,

JOHN DAVIS, *Chairman.*

HON. LEVI WOODBURY,

Secretary of the Treasury.

TREASURY DEPARTMENT, *May 5, 1836.*

SIR : Your letter of the 19th ultimo, in relation to the petition of David Melvill, has been received.

Soon as it was in my power, under the great pressure of other official duties, and especially the preparation of a reply to the resolution of the Senate passed the day previous to your letter, and which reply could not be entirely finished till two days since, I proceeded to a full examination of the case of Mr. Melvill.

As his petition has not been forwarded to me for perusal, I am apprized of its material parts only by the description contained in your letter.

He is represented by you as stating "that he had been oppressed by the collector" of Newport, "and unjustly removed from his office." He is further said to allege "that he was dismissed because he was not a freeholder, and, therefore, had no right to vote ; and that another indi-

vidual was restored after being removed, on an express condition that he and his father should in future vote contrary to their opinions, as before expressed ;” and that “ he asks nothing for himself, but prays that such legislation may be had as to restrain, in future, the exercise of power in such a manner.”

With a view, it is presumed, to lay the foundation for some new legislation of that character, he is said further to state “ that the Treasury Department is in possession of various letters and documents which relate to this matter, and will tend to establish the truth of his allegations.” You add that “ this petition, with the papers, was referred to the Committee on Commerce for examination,” and that you are “ directed by that committee to request me to furnish them with such papers, including the report of the collector, if there be one, believing them to be necessary to a full investigation.”

Presuming that by “ such papers” you do not mean those papers just before named as referred to the committee with the petition, but rather those “ letters and documents” which Mr. Melvill describes as in possession of this Department, and tending “ to establish the truth of his allegations” above mentioned, I would present the following observations in relation to them. First, independent of Mr. Melvill’s own letters sent to the Department some months after the appointment of another person in his place had been made by the collector of Newport and confirmed by this Department, there are no letters or documents here which, in the opinion of this Department, are considered as even alluding to, much less establishing the only specific allegations described as made by him against the collector, viz : that he dismissed Mr. Melvill because “ not a freeholder,” and having “ no right to vote,” or that another individual had been restored to office by the collector on an express condition that he and his father should in future vote contrary to their opinions, as before expressed.”

Nor are there any letters, except his own, which, in the opinion of this Department, tend to establish either of the two *general* charges enumerated, that Mr. Melvill has “ been oppressed by the collector” or “ unjustly removed from his office.”

On the contrary, the facts in the case show that the collector conducted in conformity to established usage and law. He was appointed to office by the advice of the Senate, on the 2d January, 1835, in the place of Mr. Ellery, resigned.

On the 3d of February, having examined the list of persons in subordinate situations who had served under his predecessor, and having formed some acquaintance with their qualifications during his duties under a temporary commission from the President in the recess, he concluded to retain a portion of them, and to employ others more efficient or acceptable, in the place of the remainder.

Accordingly, under the act of Congress of March 2, 1799, which enacts that the collector “ shall, with the approbation of the principal officer of the Treasury Department, employ proper persons as weighers, gaugers, measurers, and inspectors, at the several ports within his district,” he made a report, nominating to this Department for confirmation, a list of persons for such employment, not including Mr. Melvill. A copy of that report is annexed. (No. 1.) It not appearing distinctly in whose

places the new officers were selected, a letter requesting a further communication on that point was addressed to him, a copy of which, and of his second report or reply, are herewith submitted. (Nos. 2 and 3.)

The subject was then taken into consideration, and the principle applied which it was supposed had generally governed the Department in such cases, viz : that there was a manifest propriety in not requiring a collector to keep in his employ and confidence subordinate persons in whom he had not full reliance, and whose services he might not deem, from any cause, so agreeable and useful to himself or the community as that of others ; and that he, on the spot, and often at a great distance from the Department, was presumed by the act of Congress, as was the fact, to be much more competent to judge of the peculiar fitness of the individuals around him to fill the subordinate stations than was the Department. I concluded, therefore, it was my duty, as matter of course, to confirm his nominations, unless some fact happened to be known which required further investigation or inquiry. Sometimes a want of full confidence in the judgment or impartiality of the collector, or from knowledge personal or otherwise of the individuals nominated, or from something unusual in the apparent course pursued, or in the apparent or assigned causes of a change, induces the Department, before giving its final approbation, to postpone the subject, and request additional information, or to withhold entirely its sanction to the appointment.

But here the collector himself had just been appointed on the strongest recommendations, and it had been previously decided by the United States circuit court having jurisdiction in his district, that all the subordinates of his predecessor, situated like the petitioner, held their stations during the collector's pleasure, "and on his death, removal, or resignation," legally ceased to be in office till reappointed.

Certain cases are enumerated by statute where inferior officers may hold over ; but they do not extend to subordinates of this description, and hence, coupled with the other language and the spirit of the act of Congress, Justice Story decided that "they depend for their employment upon the good will of each successive collector." The Department, however, though differing in practice from this decision as to the necessity of a re-appointment in these cases before a subordinate could act again officially, knew nothing which should render any special investigation proper as to most of the persons appointed. But, having had some reason to doubt as to two of those nominated, their cases and theirs alone, on the 10th of February, as will be seen from my reply annexed, were suspended for further information, and the other nominations were postponed till a more particular report was made concerning whose places they were all selected to fill.

Nor does the Department now understand that the person confirmed in the place of Mr. Melvill is alleged by him to be otherwise than well qualified, very competent, and suitable for his station. Consequently, pursuing the long practice of the Department in like cases, and of the Senate in nominations by the President of the United States, I approved the appointments to which no valid objections were known, as soon as his explanations arrived, on the 14th of February. Copies of that approval, and of his explanations, are annexed. Indeed it always seemed probable, and, at times before 1831, the practice is understood to have

conformed to such a construction of the act, that the approbation of the Department was intended to be confined to the *number* and *employment* of the subordinate officers under the collector, and not generally to extend to the particular individuals themselves, whom he might deem it useful to employ in those offices, being himself chiefly responsible for them, residing on the spot, with better means of judging, and with the importance, if not necessity, of perfect harmony and co-operation in all his subordinates, in order to ensure greater efficiency in the discharge of the duties of their stations. Such seems to me, now, a fair and practical view of the subject; and that the controlling power of the Department, when rightfully exercised as to the individuals employed, must rather rest on usage and the general supervising direction of the customs belonging to the Treasury, than on the words or spirit of the particular act of Congress under consideration. But it is proper to add that, at most periods, it is understood to have been customary to exercise this control, either under the words of the act cited, or under the general authority of the Department, provided the Department happened, at the time of the nominations, to be in possession, from any quarter, of information unfavorable to the appointment.

But, from whatever source deriving the control, the Department saw nothing improper in the collector, or the subject-matter, in the present case, sufficient to induce or justify it in withholding a sanction to the particular appointment made in the place of Mr. Melvill, in February, 1835. Having approved it in the customary manner, and some months having expired without complaint, it was surprised to receive, on the 2d of July, a very long communication from Mr. Melvill, in relation to the conduct of the collector.

As the Department possesses no authority by law, and has never, in fact, exercised any to my knowledge, in removing this class of subordinate officers, (when once appointed by the collector,) except through his recommendation or nomination to that effect, but holds him answerable if improper persons are continued to be employed or retained in office after sufficient objections are known to them, I proceeded at once to apprise him of Mr. Melvill's complaint, and to make certain inquiries with a view to satisfy myself, as the head of the Department, whether the charges made by him against the collector were of a character which seemed to require any censure for what was already past and irreversible by the Department alone, or any communication to the collector, intimating that his conduct had been so improper as to require that it should be reported to the President, with a view to his own removal from office.

Those inquiries, like most others of a similar character between principal and subordinate officers about character and the qualifications and fitness of candidates for office, were executive in their nature, and not intended for the public eye; and the replies or statements to the Department often being likely to cause litigation, heart-burnings, and hostilities, if disclosed, they are all generally, (though sometimes mixed up with other matter, either public, or of little consequence if made public,) deemed confidential in their design and substance, and of course the details ought but seldom to be regarded as proper subjects for public communication. Such replies in the present case are, therefore, not presumed to be wished for by the committee, on an occasion when the

Senate is not engaged in Executive business or secret session, but in the public and legislative consideration of a petition which asks merely for legislation, and that in respect to a case where, by law, the collector and the Department now possess the whole appointing power.

Nor is the practice of the Department, even under the injunction of secrecy in transacting Executive business as to appointments, where the Senate is, by law, a co-ordinate power, to forward communications on those subjects, unless they relate to nominations by the President, then under advisement before the Senate. Even then, the nature of the inquiries, being on so delicate a subject as that of character, has led the Senate not only by its own rules to prohibit remarks concerning character from being divulged, but nothing is sent there except in confidence, and except what the Chief Executive Magistrate and the Department suppose may be proper and useful in forming a correct decision on the nomination.

But for this cautious course, information would seldom be forwarded to aid the Executive or the Department in forming correct views as to candidates for inferior offices at a distance, and the appointments would often have to be made in ignorance and doubt, if communications could not be interchanged under a conviction that they would be perused and treated as only Executive and confidential in their character.

The Department deems it proper to add that, so far from feeling any objection to further legislation on this subject, which should take away the little supervising power now exercised over it here, that a great relief would be experienced if the whole power as to filling those subordinate appointments with particular individuals, was devolved on the collectors exclusively; or, if the collectors are not considered sufficiently trustworthy to exercise this power without advice or appeal, that the appeal should be made to Congress itself; or, that the power of original appointment and removal in all these cases should be vested in Congress, if the exercise of it there is deemed more convenient and safe, and, at the same time, constitutional.

One of the most troublesome, delicate, and thankless tasks performed by this Department, is the supervision of this very subject, possessing as it does so imperfect means to decide with propriety on any supposed partiality or error of judgment by a collector, being often at so great a distance and knowing so little personally of the men selected; and opinions being so contradictory and uncertain, as they often are, in relation to the peculiar fitness of particular candidates for inferior employments, to fill which such countless numbers suppose themselves qualified, and earnestly enlist many friends to furnish every possible aid to advance them.

The construction given to the present law by the circuit court of the United States having jurisdiction in the State in which Newport is situated, in a case like the present, respecting the power of a collector and the rights of an inferior officer, appointed by his predecessor, and which has been already cited, is deemed to be so directly in point as a guide to what the law now is, and as some refutation of the general charge that the petitioner has been "oppressed by the collector, and unjustly removed from his office," that, for convenience of reference, a copy of the whole case is annexed, (No. 5.)

The principle in this decision, however, so far as regards the necessity

of re-appointment here, it may be proper for me to state, has not generally been recognised by the Department as imperative. On the contrary, from long usage, and the circumstance that the cause was not carried up to the supreme court for confirmation or reversal, fortified by an opinion of the Attorney General, in 1831, it has been deemed best here, generally, to adhere to the course pursued before that decision was made, and to consider all the subordinate officers in the customs, so far as respects the Department, after their superior has died or resigned, to be not in a condition requiring a reappointment, but as still continuing in the public service, until the new collector chooses to appoint others in their place.

Since the above decision, there may have been an error in practice here which requires legislative correction, and which, after the long continuance of the practice since the decision and the opinion of the Attorney General, I have not felt bound to change without further legislation.

But that opinion leaves the power of appointment and removal by the collector as full as it stood before, since it says, "the new incumbent may immediately, on his entry into office, exercise his right of removal and substitution."

It has not, however, been allowed by the practice of this Department since 1829, whatever it may have been before, that he do this without first submitting his nominations for the approbation of the Secretary of the Treasury.

Respectfully yours,

LEVI WOODBURY,
Secretary of the Treasury.

HONORABLE JOHN DAVIS,
*Chairman of the Committee
of Commerce in the Senate.*

(No. 1.)

DISTRICT AND PORT OF NEWPORT,
Collector's Office, February 3, 1835.

SIR: I nominate to the Secretary of the Treasury the following persons as subordinate officers of the customs for this port. I have confidence in their integrity to perform the duties which will be incumbent on them.

I have the honor to be,

Very respectfully,

Your obedient servant,

WM. LITTLEFIELD, *Collector.*

Henry J. Hudson, to be a permanent inspector.

Isaiah Crooker, jr., inspector and measurer.

Caleb Tripp, inspector.

Edward Willis and John H. Crosby, temporary inspectors.

Elisha Atkins, jr., weigher.

Peleg Clarke, gauger.

James Smith, boatman.

Of the rest of the subordinate officers, I wish G. W. Ellery, Henry Gardner, George Howland, and H. O. Tift, to be retained in the situations which they now respectively occupy.

WM. LITTLEFIELD, *Collector.*

HON. LEVI WOODBURY,
Secretary of the Treasury.

(No. 2.)

TREASURY DEPARTMENT,
February 10, 1835.

SIR: Before acting finally upon the nominations of certain subordinate officers of the customs for your district, made under date of the 3d instant, in a letter addressed to this Department, and enclosed to the honorable Dutee J. Pearce, I wish you to state in whose place any officer is nominated, and especially as to the character and qualifications of G. W. Ellery and H. O. Tift.

I am, very respectfully,

Your obedient servant,

L. WOODBURY,
Secretary of the Treasury.

WM. LITTLEFIELD, Esq.,
Collector, &c., Newport, R. I.

(No. 3.)

CUSTOM-HOUSE, NEWPORT, *Feb. 14, 1835.*

SIR: In reply to your letter of the 10th instant, I have the honor to state that list No. 1, below, is composed of the officers of the customs attached to this port, as they exist at present; No. 2 will show the changes contemplated.

No. 1.

No. 2.

Ellery, permanent inspector.
Eddy, do.
Gardner, inspector, occasional.
Howland, do. do.
Hull, do. do.
Mumford, do. do.
Topham and Bliss, inspec. temp.
Coggeshall, weigher and gauger.
Melvill, do. do.
Barker, boatman.
Tift, do.

Ellery, permanent inspector.
Hudson, do.
Gardner, inspector, occasional.
Howland, do. do.
Tripp, do. do.
Crooker,* inspector and measurer.
Willis & Crosby, do., temporary.
Atkins, weigher only.
Clarke, gauger do.
Smith, boatman.
Tift, do.

* Measurer Crooker was nominated to this place in lieu of Ellery.

In answer to your inquiry respecting the character and qualifications of G. W. Ellery and H. O. Tift, I have to state that I found Ellery in possession of the office when I entered it; that is to say, in fact, that although another signed as, he did the duties of collector, and, in my opinion; was the only officer attached to the establishment capable of doing them. He has been of great use to me from his knowledge of the localities of the office, and of the somewhat peculiar mode of conducting custom-house business. He is not competent to keep the books, that I do myself; but in the thousand little things constantly requiring attention, and which the collector, in consequence of other avocations, cannot possibly give his mind to, he is at home, and of more importance in carrying on the necessary business of the office than half a dozen of the other subordinates. He is the son of old Mr. Ellery, the first collector under the constitution, but more known as a signer of the Declaration of Independence, has been all his life about the custom-house, and, I believe, is admitted on all hands to be honest and temperate, (with me two *sine qua nons* for office.) While speaking of this man, it is as well to say now, that, if necessary, I wish you to authorize me occasionally to appoint him as deputy. I think, by the law of 1799, in cases of emergency, "sickness and necessary absence," I have the power, but had rather, at any rate, that you should confirm it. Since I have been in office, my whole time (not even excepting Christmas-day, and sometimes Sundays) has been given to its duties; and I look with confidence to the head of the Treasury to grant every facility in his power to make the burden bearable. In the spring I may have to be absent for a day or two, and some one must have authority, in my absence, to enter and clear coasters, and, indeed, to do any business that may turn up.

H. O. Tift is a boatman who has been for many years attached to the custom-house—honest, capable, and accommodating—in short, a first-rate man for that situation. I hope I have not been tedious, and that what has been stated may prove satisfactory.

And am, with sentiments of the highest consideration,

Your obedient servant,

WM. LITTLEFIELD, *Collector.*

Hon. LEVI WOODBURY,
Secretary of the Treasury.

(No. 4.)

TREASURY DEPARTMENT, *March 4, 1835.*

SIR: The following nominations of subordinate officers of the customs, made in your letter of the 3d, and referred to in yours of the 14th ultimo, are approved, to wit: Henry J. Hudson, as permanent inspector of the customs, in the place of Joseph W. Eddy; Isaiah Crooker, jr., inspector and measurer, in the room of Caleb C. Mumford; Caleb Tripp, inspector, in the place of John Hull; Edward Willis and John H. Crosby, temporary inspectors, in the places of Theophilus Topham and Jeremiah Bliss; Elisha Atkins, jr., weigher, in the room of David M. Coggeshall; Peleg Clarke, gauger, vice David Melvill; James Smith, as boatman, in the

place of — Barker; Henry Gardner and George Howland to be continued in their present situations as inspectors of the customs. The proposed reappointments of George W. Ellery as permanent inspector, and H. O. Tift as revenue boatman, are reserved for further advisement, as to a permanent employment in their respective capacities.

I am, very respectfully,

Your obedient servant,

LEVI WOODBURY,

Secretary of the Treasury.

WM. LITTLEFIELD, Esq.,

Collector of the Customs, Newport, R. I.

(No. 5.)

UNITED STATES *vs.* WOOD.

Circuit Court of the United States for Massachusetts district, May term, 1815. 2d Gallison's Reports, 361.

Indictment for resisting one Lewis, an inspector of the customs, in the execution of the duties of his office, founded on the seventy-first section of the act of March 2, 1799, chapter 128.

At the trial it appeared that Lewis was duly appointed an inspector of the customs by the late collector of Boston, since whose resignation he had been reappointed to the same office by the present collector; but the alleged resistance took place after the resignation of the former collector, and before the reappointment of Lewis, he having continued to act as inspector under his old commission.

The question reserved at the trial was whether Lewis was, under the circumstances, an inspector against whom the offence could be committed.

STORY, J. The twenty-first section of the act of March 2, 1799, chapter 128, provides that the collectors of the customs shall, with the approbation of the principal officer of the Treasury Department, employ proper persons as weighers, gaugers, measurers, and inspectors, at the several ports within their districts. The officers appointed by the collector under this section hold their offices *during his pleasure, and cease to be such upon his death, removal, or resignation*, unless the law has enabled him to give more permanency to their offices. In respect to certain officers, the law has provided for the execution of their duties after their principal is out of office. Such, in the case of the death of the collector, is the authority vested, by the twenty-second section of the act, in his deputy. No such provision exists in respect to inspectors. They depend for their employment *upon the good will of each successive collector*, and, in practice, it has always been understood that, unless appointed, or, in the language of the statute, *employed* by the collector actually in office, they are no longer officers of the customs.

The indictment, therefore, cannot be sustained, and the defendant is entitled to judgment.

DAVIS, J., concurred.